

In the
Indiana Supreme Court



In the Matter of:)	Supreme Court Cause No.
Kevin M. McSHANE,)	49S00-1301-DI-65
Respondent.)	

PUBLISHED ORDER APPROVING STATEMENT OF CIRCUMSTANCES
AND CONDITIONAL AGREEMENT FOR DISCIPLINE

Pursuant to Indiana Admission and Discipline Rule 23(11), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a "Statement of Circumstances and Conditional Agreement for Discipline" stipulating agreed facts and proposed discipline as summarized below:

Stipulated Facts: Count I. After Client 1's co-defendant was awarded a new trial based on an improper jury instruction, Client 1 retained Respondent for a flat fee of \$5,000 to attempt to obtain similar relief in a successive post-conviction relief (PCR) proceeding. Respondent told Client 1 it would be advantageous to file a petition before the co-defendant's new trial. Respondent then failed to respond to attempts at communication by Client 1 and others acting on his behalf. Respondent failed to seek leave to file a successive PCR petition before the co-defendant was again convicted of murder and his conviction was affirmed. The Court of Appeals later denied Respondent leave to file a successive PCR petition for Client 1, and Respondent did not advise Client 1 of the denial order. Respondent initially did not return any part of the fee he could not earn due to his inability to complete the representation for which he was hired. However, Respondent did refund the \$5,000 during the course of these disciplinary proceedings.

Count II. Respondent filed an amended PCR petition on behalf of Client 2. After the trial court issued an order denying the request for relief, Respondent did not inform Client 2 of the decision.

Violations: The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

- 1.3: Failure to act with reasonable diligence and promptness.
- 1.4(a)(3): Failure to keep a client reasonably informed about the status of a matter.
- 1.4(a)(4): Failure to comply promptly with a client's reasonable requests for information.
- 1.4(b): Failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions.
- 1.5(a): Charging an unreasonable fee.

Discipline: The parties propose the appropriate discipline is a public reprimand. The Court, having considered the submissions of the parties, now approves the agreed discipline and imposes **a public reprimand** for Respondent's misconduct.

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, the hearing officer appointed in this case is discharged.

The Clerk is directed to forward a copy of this Order to the hearing officer, to the parties or their respective attorneys, and to all other entities entitled to notice under Admission and Discipline Rule 23(3)(d). Thomson Reuters is directed to publish a copy of this order in the bound volumes of this Court's decisions.

Done at Indianapolis, Indiana, on November 24, 2014.

/s/ Loretta H. Rush
Chief Justice of Indiana

All Justices concur.